

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	
	)	Docket No. CAA-10-2001-0096
ARCO, Cherry Point Refinery,	)	
	)	ADMINISTRATIVE ORDER
	)	ON CONSENT
	)	
Blaine, Washington,	)	
	)	
Respondent.	)	
_____	)	

ADMINISTRATIVE ORDER ON CONSENT

WHEREAS, ARCO currently is operating 26 diesel powered non-road engines to provide electricity to its Cherry Point Refinery in Blaine, Washington;

WHEREAS, the 26 diesel powered non-road engines emit Nitrogen Oxides (“NO<sub>x</sub>”) at the rate of approximately 3200 tons per year (“tpy”);

WHEREAS, as indicated in a letter to the United States Environmental Protection Agency (“EPA”) dated February 15, 2001, ARCO proposes to construct, install and operate 14 natural gas-fired turbines to provide electricity for the refinery;

WHEREAS, ARCO proposes to install and operate the natural gas-fired turbines, and replace the non-road engines, immediately, prior to obtaining a Prevention of Significant Deterioration (“PSD”) permit for the turbines from the State of Washington Department of Ecology (“Ecology”) and EPA, and prior to obtaining a new source approval order from Northwest Air Pollution Authority (“NWAPA”);

WHEREAS, the 14 natural-gas fired turbines would emit NO<sub>x</sub> at the rate of approximately 350 tpy;

WHEREAS, under the federal PSD regulations found at 40 C.F.R. § 52.21(b) through (w) which have been incorporated into the Washington State Implementation Plan (“SIP”) at 40 C.F.R. § 52.2497, a “major stationary source” may not begin actual construction of a “major modification” without first obtaining a PSD permit;

WHEREAS, pursuant to 40 C.F.R. § 52.21(u) EPA has delegated to Ecology partial responsibility for administering federal PSD regulations and has retained authority to amend that delegation at any time;

WHEREAS, under Ecology regulations for new source review (Washington Administrative Code (“WAC”) ch. 173-400), the owner or operator must file a notice of construction application and obtain an approval order and PSD permit prior to beginning actual construction on a major modification to a major stationary source;

WHEREAS, pursuant to the Revised Code of Washington (“RCW”) 70.94.053, NWAPA has jurisdiction to carry out the duties and exercise the powers provided in RCW 70.94;

WHEREAS, under NWAPA regulations, Section 300, it is unlawful for any person to cause or allow the construction, installation, establishment or modification of an air contaminant source or emission unit, except excluded sources, unless a Notice of Construction and Application for Approval has been filed with and approved by NWAPA;

WHEREAS, installation of the 14 natural-gas fired turbines will constitute a “major modification” to a “major stationary source” under the federal and state PSD provisions;

WHEREAS, on February 19, 2001, ARCO submitted a PSD permit application to Ecology and EPA for the installation of the 14 natural-gas fired turbines;

WHEREAS, the Governor of Washington signed a Proclamation on January 26, 2001, which finds that vital public services, particularly affordable electrical power, are at risk and there exists a situation that threatens to disrupt or diminish the supply of energy to the extent that the public health, safety, and general welfare may be jeopardized, and finds that an energy supply alert exists within the State of Washington;

WHEREAS, allowing ARCO to install the 14 natural-gas fired turbines will allow ARCO to cease operation of the diesel powered generators and maintain operation of the refinery without pulling 73 Megawatts (“MWs”) of electricity off the regional electric power supply grid;

WHEREAS, ARCO has agreed to implement specific projects as described in Section IV of this Order that are designed to produce a net environmental benefit notwithstanding the installation and operation of the 14 natural-gas fired turbines prior to ARCO’s receiving a PSD permit and new source approval order;

WHEREAS, EPA, Ecology, NWAPA, and ARCO agree that it will benefit the air quality of Whatcom County and the adjacent counties of Washington, as well as the air quality of Southern British Columbia, Canada, by eliminating the emissions caused by the operation of the non-road engines as expeditiously as possible, that it will alleviate the electricity shortfall to allow ARCO to generate electricity for its own consumption, rather than pull from the grid, and that this Order is in the public interest;

NOW, THEREFORE, the Parties agree that:

**I. Authority to Issue Order**

1. EPA has the authority to issue this Order pursuant to Section 167 of the Clean Air Act, 42 U.S.C. § 7477. NWAPA has authority to issue this Order pursuant to NWAPA Regulations, Section 121.

**II. Applicability and Binding Effect**

2. This Order shall apply to and be binding upon the Parties, their successors and assigns, and their officers, directors, employees in their capacities as such, assignees and delegates and all other persons and entities as provided for in Fed. R. Civ. P. 65(d).

3. From the Effective Date of this Order, until its Termination, ARCO shall give written notice and a copy of this Order to any successors in interest at least thirty (30) days prior to any transfer of ownership of any portion of or interest in the Cherry Point Refinery, or any assignment of rights concerning, or delegation of duties relating to, any of the operations of the Cherry Point Refinery. ARCO shall condition any transfer, in whole or in part, of ownership of, operation of, or other interest in the Cherry Point Refinery upon a binding written commitment to fully and successfully execute the terms and conditions of this Order. Simultaneously with such notice, ARCO shall provide written notice of such transfer, assignment, or delegation to EPA, Ecology, and NWAPA. In the event of any such transfer, assignment, or delegation, ARCO shall not be released from the obligations or liabilities of this Order unless EPA has provided written approval of the release of said obligations or liabilities.

### **III. Definitions**

4. Unless otherwise expressly provided herein, terms used in this Order shall have the meaning given to those terms in the Clean Air Act, and the regulations promulgated thereunder, and the Washington SIP and the regulations promulgated thereunder. In addition, the following definitions shall apply to the terms contained within this Order:

“ARCO” shall mean Atlantic Richfield Company, part of the BP Group, its successors and assigns, and its officers, directors, agents, servants, and employees in their capacities as such;

“Cherry Point Refinery” shall mean the Cherry Point refinery located in Blaine, Washington;

“BACT” shall mean the Best Available Control Technology, as defined by Section 169(3) of the Act, 40 C.F.R. § 52.21(b)(12) and WAC 173-400-030(10);

“Day” or “day” shall mean a calendar day;

“Ecology” shall mean the State of Washington Department of Ecology;

“Effective Date” shall mean the latter date this Order was signed by all Signatories;

“Effective Period” shall mean the period starting on the Effective Date and ending on the Termination Date;

“High Sulfur Diesel” shall mean diesel with a sulfur content of 0.5 weight percent or less;

“Low Sulfur Diesel” shall mean diesel fuel with a sulfur content of 0.05 weight percent or less;

“Low NO<sub>x</sub> burners” shall mean burners with a NO<sub>x</sub> emission rate of less than or equal to 0.07 lbs/MMbtu of fuel fired;

“NWAPA” shall mean the Northwest Air Pollution Authority;

“Order” shall mean this Administrative Order on Consent;

“Paragraph” shall mean a portion of this Order identified by Arabic numerals;

“Parties” shall mean EPA, NWAPA, and ARCO;

“Section” shall mean a portion of this Order identified by a roman numeral;

“Signatories” shall mean EPA, Ecology, NWAPA, and ARCO; and

“Termination Date” shall mean the date in paragraph 24.

#### **IV. Terms and Conditions**

5. ARCO shall burn only natural gas in the 14 natural gas-fired turbines during the Effective Period of this Order.

a. Prior to issuance of the PSD permit, ARCO shall operate the turbines so as not to emit more than 25 ppmv NO<sub>x</sub> (dry, corrected to 15% oxygen) and 50 ppmv CO (dry, corrected to 15% oxygen) based on a three hour average.

b. ARCO shall conduct a performance test on two of the units (one unit at each of the two installation locations) to demonstrate compliance with the interim emission limits listed in paragraph 5a, and submit a written report to each of the Signatories within 180 days of initial startup of those units. The performance testing shall be conducted using test methods found in 40 C.F.R. Part 60 Appendix A.

6. ARCO shall update its PSD permit application to include the Class I impact analysis for the installation of the 14 natural-gas fired turbines to Ecology and EPA as required by the Washington SIP within 30 days of the effective date of this order.

7. The BACT analysis contained in the PSD permit application and its review by the regulatory agencies shall be conducted as it would be for any proposed project and shall not be prejudiced by the fact that the 14 natural-gas fired turbines will already be located at the site and in operation.

8. If BACT as decided through the PSD process and new source review is determined to be different than what is installed on the 14 natural-gas fired turbines, ARCO will implement BACT and comply with any emission limits established by the PSD permit and the new source review approval order within a reasonable time frame as determined by Ecology and NWAPA.

9. ARCO shall offset the NO<sub>x</sub>, carbon monoxide (“CO”), and particulate matter (“PM”) emissions actually emitted by the 14 natural gas-fired turbines during the following period: beginning on the Effective Date of the Order, and ending on the date of issuance of the PSD permit or 12 months after the Effective Date of the Order, whichever is earlier. None of the offsets/reductions generated by the actions taken in 9a, 9b and 9c below shall be considered “surplus” or “creditable,” as those terms are defined or used in EPA and Washington State regulations and guidance, or otherwise available to ARCO to offset or net other activities at the Cherry Point Refinery or elsewhere. ARCO will generate the offsets through the following projects:

a. ARCO will retrofit the second stage hydrocracker fractionation reboiler with low NO<sub>x</sub> burners during the first scheduled maintenance shutdown (turnaround) of that unit after June 1, 2001 but in no case later than May 31, 2004. The installation of low NO<sub>x</sub> burners on this unit will not count towards the Defendant’s (as defined by the judicial consent decree) compliance

with the requirements of the civil judicial consent decree lodged with the United States District Court for the Northern District of Indiana on January 18, 2001, Civil No. 2:96 CV 095 RL.

b. ARCO will reduce Reid Vapor Pressure (“RVP”) of gasoline distributed from the Cherry Point Refinery truck rack during the time period beginning on November 1, 2001, and ending on March 1, 2002, by an average of 0.50 psia when compared to the average RVP of gasoline distributed from the truck rack during the same calendar days of the period from November 1, 1999, through March 2001, to mitigate 100% of the pre-permitted CO emissions from the installation of the 14 natural-gas fired turbines.

c. ARCO will substitute 50,000 barrels of Low Sulfur Diesel or an equivalent amount of natural gas for 50,000 barrels of High Sulfur Diesel ordered by one or more local customers. ARCO will absorb the cost differential between High Sulfur Diesel and natural gas or Low Sulfur Diesel. Fuel substitution yields sufficient secondary PM reductions to fully offset pre-permitted PM emissions from turbines.

10. The projects listed above are sufficient to satisfy EPA, Ecology, and NWAPA, provided that none of these projects are required by any other agreement, order, or legal obligation to which ARCO is subject, and, further provided, that ARCO donates \$100,000 to a Whatcom County low income energy assistance fund or funds. The projects listed above in paragraphs 9a, 9b, and 9c shall be completed no later than May 31, 2004.

11. ARCO will conduct stack testing on three of the natural-gas fired turbines for criteria pollutants and one turbine for toxic pollutants based on a test program to be agreed upon between



NWAPA and ARCO. ARCO may use the testing required by Paragraph 5.b to satisfy the requirements of this paragraph for NO<sub>x</sub> and CO.

12. EPA, Ecology, and NWAPA, hereby reserve their right to be present during any and all emissions testing conducted at the Cherry Point Refinery. Accordingly, ARCO shall provide EPA, Ecology, and NWAPA advance written notice of its proposed testing and grant reasonable access to the Cherry Point Refinery. The advance written notice shall be received by EPA, Ecology, and NWAPA at least 3 business days prior to testing.

**V. Effect of this Administrative Order**

13. ARCO's compliance with the terms and conditions of this Order resolves ARCO's liability under the federal Clean Air Act, RCW ch. 70.94 and applicable NWAPA Regulations for the installation and operation of the 14 natural gas-fired turbines without first applying for and obtaining a valid PSD permit or new source approval order. Compliance with this Order will not resolve ARCO's liability for any violations unrelated to these particular PSD and new source review pre-construction requirements.

14. While this Order is in effect, ARCO agrees not to dispute before the Environmental Appeals Board, in a court of law, or otherwise, the applicability of PSD and new source review to the ARCO facility for the installation of the 14 gas-fired turbines.

15. The Parties reserve all other rights and remedies, legal and equitable, to enforce the provisions of this Order.

16. Nothing herein shall be construed to limit the power of EPA, Ecology, and NWAPA to undertake any action against ARCO or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

17. This Order is neither a permit, license, authorization, nor a modification of existing permits under any federal, state, or local law, and in no way relieves ARCO of its responsibilities to comply with all applicable federal, state, and local laws and regulations, except as specifically provided in paragraph 13 above.

18. EPA reserves all rights to review, comment on and object to the proposed PSD permit regarding the ARCO facility.

## **VI. General Provisions**

19. Any modification of this Order shall be by agreement of the Parties, with concurrence from Ecology, and in writing and shall not take effect until the written agreement is signed by all Signatories.

20. Each undersigned representative of the Parties certifies that he or she is authorized to enter into the terms and conditions of this Order and to execute and bind legally the Parties to this document.

21. This Order shall be effective upon the Effective Date. Signature by the representative of a Signatory on any copy of the Order shall constitute signature of the Order for determining the Effective Date.

22. Unless this Order states otherwise, whenever, under the terms of this Order, written notice is required to be given, or a report or other document is required to be sent by one Signatory to

another, it shall be directed to the individuals specified at the addresses in paragraph 23, unless those individuals or their successors give notice of a change of address to the other Signatories in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided.

23. The following addresses shall be used for notices and submissions required by this Order:

As to EPA:

John Keenan  
U.S. Environmental Protection Agency Region 10  
1200 Sixth Avenue, OAQ-107  
Seattle, WA 98101-1128

As to ARCO:

Walter Williamson  
ARCO Cherry Point Refinery  
4519 Grandview Road  
Blaine, WA 98230

As to Ecology:

Robert Burmark  
Washington State Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600

As to NWAPA:

Lynn Billington  
Northwest Air Pollution Authority  
1600 South Second Street  
Mt. Vernon, WA 98273-5202

## **VII. Termination of this Order**

24. This Administrative Order on Consent shall terminate when ARCO has complied with the terms of this Order.

25. Within 30 days of completion of each project listed in paragraph 9 above, ARCO shall provide notice to EPA, Ecology and NWAPA, of such completion, along with documentation substantiating such completion in accordance with this Order.

26. Notwithstanding paragraph 24 above, EPA may terminate this Order for cause if ARCO fails to timely satisfy any requirement of this Order, provided ARCO is first notified of the breach, and ARCO fails to promptly cure the deficiency.

#### **VIII. Survival of Terms**

27. Paragraph 13 of this Order shall survive the termination of this Order, unless EPA terminates the Order for cause pursuant to paragraph 26, in which case the Parties will retain the legal rights and responsibilities as they stood prior to the Effective Date of this Order.

**IX. Signatories**

28. The undersigned, representative of the Parties each certify that he or she is authorized to enter into the terms and conditions of this Order and to bind legally the Parties to this Order.

Date: March 12, 2001

\_\_\_\_\_/s/\_\_\_\_\_  
Charles E. Findley  
Acting Regional Administrator  
U.S. EPA, Region 10

Date: \_\_\_\_\_

\_\_\_\_\_/s/\_\_\_\_\_  
Rick E. Porter  
Business Unit Leader  
ARCO Cherry Point Refinery

Date: \_\_\_\_\_

\_\_\_\_\_/s/\_\_\_\_\_  
Jamie Randles, Control Officer  
Northwest Air Pollution Authority

With concurrence from Ecology:

Date: \_\_\_\_\_

\_\_\_\_\_/s/\_\_\_\_\_  
Mary Burg, Air Quality Program Manager  
State of Washington Department of Ecology